

Hall-Brooke Hospital, a Division of Hall-Brooke Foundation, Inc., Employer-Petitioner and Connecticut Health Care Associates, District 1199, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO, Union-Petitioner

St. Mary Home, Incorporated and Professional Nurses Association, Unit 52, Connecticut Health Care Associates, District 1199, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO, Petitioner. Cases 39-RM-11, 39-AC-10, and 39-AC-11

26 August 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing was held before Howard D. Neidig, Jr., a hearing officer of the National Labor Relations Board. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, the Regional Director for Region 1 issued an order transferring these cases to the Board for decision. Thereafter, the Employers and the Union-Petitioner filed briefs in support of their respective positions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this consolidated proceeding, the Board finds:

1. Employer-Petitioner Hall-Brooke Hospital, a Division of Hall-Brooke Foundation, Inc. (herein referred to as Hall-Brooke), a nonprofit Connecticut corporation, is engaged in the operation of a health care institution in Westport, Connecticut. Employer St. Mary Home, Incorporated (herein referred to as St. Mary), a Connecticut corporation, is engaged in the operation of a nursing home in West Hartford, Connecticut. During the 12-month period preceding the hearing herein, a representative period, each of these Employers had gross revenues in excess of \$250,000 from the performance of its services and received goods and materials valued in excess of \$5,000 directly from suppliers located outside the State of Connecticut. Based on the foregoing and on the stipulation of the parties, we find that Hall-Brooke and St. Mary are engaged

in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Union-Petitioner is a labor organization claiming to represent certain employees of the Employers.

3. A question concerning representation exists concerning the representation of certain employees of the Employers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

In 1977, the Board certified Connecticut Health Care Associates (CHCA) as the exclusive bargaining representative of the registered nurses and licensed practical nurses employed by St. Mary, and was similarly certified in 1979 to represent certain employees of Hall-Brooke. In 1981, CHCA affiliated with District 1199, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO, and thereby became the organization which is the Union-Petitioner in the instant case. The affiliation was effected by way of an election conducted in September 1981 among members of CHCA, from which election nonmember employees represented by CHCA were excluded. As none of the employees in the certified bargaining units of either Hall-Brooke or St. Mary was a member, none of them was eligible to participate in the affiliation election.

On 23 September 1981 the Union-Petitioner conducted a separate election among those Hall-Brooke unit employees in attendance at a meeting called for the purpose of discussing the results of the previous affiliation election. No prior notice of an election was given, however, and only 10 of the approximately 77 unit employees were in attendance. Similarly, an election was scheduled for the St. Mary unit employees on 1 February 1982. Notice of such an election was sent to some, but not all, unit employees, and none appeared for the election. No further election was held.

The Union-Petitioner seeks to have the certifications in the Hall-Brooke and St. Mary units amended to substitute it for CHCA as the employees' exclusive bargaining representative. By its petition in Case 39-RM-11, Hall-Brooke asserts that a question concerning representation has arisen regarding the majority status of the Union-Petitioner, which claims to represent the Hall-Brooke unit employees.

As the Board recently held in *Amoco Production Co.*, 262 NLRB 1240 (1982), when the Board is called upon to put its imprimatur on an affiliation election, such an election must provide adequate due-process safeguards, including the right of all unit employees, whether union members or not, to participate and vote. Manifestly, the CHCA affiliation election did not meet this standard. The

record evidence with respect to the subsequent "elections" in the Hall-Brooke and St. Mary units fails to show that adequate notice was given to the unit employees. Cf. *Peco, Inc.*, 204 NLRB 1036, 1037-38 (1973); *Factory Services*, 193 NLRB 722 (1971). In these circumstances, the separate "elections" cannot form the basis for an amendment to the certifications. Accordingly, we shall dismiss the petitions in Cases 39-AC-10 and 39-AC-11. Inasmuch as our dismissal of these petitions may render Hall-Brooke's petition in Case 39-RM-11 moot, we shall remand that proceeding to the Regional Director for appropriate action.

ORDER

It is hereby ordered that the petitions in Cases 39-AC-10 and 39-AC-11 be, and they hereby are, dismissed.

IT IS FURTHER ORDERED that Case 39-RM-11 be, and it hereby is, severed and remanded to the Regional Director for Region 1 for further processing in a manner consistent herewith.

MEMBER ZIMMERMAN, dissenting.

For the reasons set forth in the dissenting opinion in *Amoco Production Co.*, 262 NLRB 1240 (1982), I would find that the affiliation election conducted here met adequate due-process requirements for an essentially internal union affair. Although no unit employees in fact were union members, they had the opportunity to become members prior to the affiliation election and thereby become eligible to participate in the election. Accordingly, I would grant the petitions to amend certifications in Cases 39-AC-10 and 39-AC-11 and would dismiss Hall-Brooke's petition in Case 39-RM-11.